Filed 7/14/15 In re G.H. CA1/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re G.H., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. G.H., Defendant and Appellant.	A141732 (Contra Costa County Super. Ct. No. J1400107)

G.H. appeals from a judgment declaring him to be a ward of the juvenile court under Welfare and Institutions Code section 602, subdivision (a), based on a finding he had possessed marijuana for sale and had committed the offense for the benefit of a criminal street gang. (Health & Saf. Code, § 11359; Pen. Code, § 186.22, subd. (b)(1).) Appellant contends the evidence presented at the contested hearing was insufficient to establish the elements of the charged offense and special allegation. He also argues the juvenile court erred in calculating his maximum period of confinement under Welfare and Institutions Code section 726, subdivision (d), and by imposing a probation condition forbidding him to possess "any weapons." We will modify the judgment to reflect the correct calculation of appellant's maximum period of confinement and to prohibit the possession of "deadly or dangerous weapons," but otherwise affirm.

I. FACTS AND PROCEDURAL HISTORY

The Contra Costa County District Attorney filed an amended petition alleging that appellant, who was 13 years old, had possessed marijuana for sale and had committed that offense for the benefit of a criminal street gang. (Health & Saf. Code, § 11359; Pen. Code, § 186.22, subd. (b)(1).) The petition also alleged unlawful possession of a firearm by a minor. (Pen. Code, § 29610.) At the contested jurisdictional hearing on the charges, the following evidence was adduced:

Deandre J., who was also known as "Black," was on probation with search conditions. On January 28, 2014, district attorney inspector Darryl Holcombe and other law enforcement officials searched the apartment where Deandre lived with his mother, Rosalind J. Appellant, who came to visit "all the time" and was the cousin of Deandre's older half brothers, was at the apartment with Deandre and Rosalind when the search was executed.

Deandre and appellant were in Deandre's bedroom when law enforcement officials arrived, but they were directed to sit on the living room couch while the search was conducted. The headboard of the bed inside Deandre's room was engraved with graffiti referring to the Swerve Team, a gang in the North Richmond area.[1]

Rosalind gave the officers permission to search her minivan, which was parked in front of the apartment. Officers found 137.78 grams of marijuana in a backpack on the backseat of the van. The marijuana was packaged in 11 small baggies contained within four larger bags. A functioning digital scale was also found in the backpack. When Holcombe asked Rosalind about the marijuana, appellant interrupted and said it belonged to him. He was taken into custody and the cell phone he was carrying was seized by the officers. Appellant was not carrying any currency on him at the time, nor was he carrying keys to the minivan in which the marijuana was found.

[1] The graffiti included the phrases "Bitch Swerve," "Swerve Team," "Trust No Bitch," "Bro's Over Hoes" and "Money Over Bitches."

Earlier that same month, Holcombe had been monitoring appellant's Facebook page [2] and saw a photograph in a public post in which appellant was holding what appeared to be a gun. Facebook provided records of appellant's page pursuant to a search warrant, and data was extracted from appellant's cell phone pursuant to a warrant. The "wall" of appellant's Facebook page included a number of photographs of appellant holding what appeared to be guns, as well as photographs of appellant and members of the Swerve Team gang throwing gang signs. Deandre appeared in two of the group photographs; in one, he was gesturing as though he were holding a gun, and in the other, he was wearing a New York Yankees jacket, a symbol of the Swerve Team. Several posts and messages to and from other individuals used slang consistent with the Swerve Team and its rivals.

In one exchange on Facebook on January 8, 2014, appellant and a Jamane J. discussed a picture of appellant holding what appeared to be a gun. Jamane: "Dass yo gun lil cuddy[?]" Appellant: "Yeh." Jamane: "How much yhu paid foe it[?]" Appellant: "150 it was my bro so he said he a give I to me for 150." Jamane: "Bring it let me hold it." Appellant: "It's black." Jamane: "I thaught he sold it to yhu fa 150[?]" Appellant: "No he b let me hold it."

Many of the photographs on appellant's Facebook page were also found on appellant's cell phone, as was a photograph of appellant taken on January 23, 2014 (five days before his arrest) in which he was smiling broadly and holding up several $20 bills. Text messages sent from appellant's cell phone the week before his arrest referred to sales of marijuana, and photographs of marijuana had been sent as attachments to some of those messages.

Detective Douglas Gault of the Richmond Police Department was qualified as an expert in identifying the circumstances in which marijuana is possessed for sale. In his

[2] Facebook was described by Holcombe as "a social media site. It allows its members to create personal websites, social media pages, to share photographs, videos, to write members, to write on their walls, to comment on their photographs, and their videos."

opinion, the marijuana found in Rosalind's minivan was possessed for the purpose of sale based on its quantity (which exceeded the amount typically carried for personal use), the number of individual baggies, the presence of a scale and the text messages and photos on appellant's cell phone referring to marijuana sales.

Gault was also qualified as an expert in criminal street gangs generally and the Swerve Team in particular. He had discussed the Swerve Team with 15 to 20 members of that gang, as well as with other law enforcement officers and members of the community, and he had arrested Swerve Team members for crimes such as felony evasion, possession of firearms, and narcotics sales. Swerve was formerly known as TIC (Trojans in Training) but changed its name in 2011 when younger members started saying "Swerve for Irv" as a tribute to the deceased Irving Cooley. The gang had a number of signs and symbols: wearing a New York Yankees cap and attire; making a hand sign with the index and pinky fingers down to symbolize an "N" for "North" or "Noya"; holding up five fingers to indicate the intersection of Fifth Street and Market Avenue, where gang members hang out and drugs are sold; and putting fingers together to make the sign of "Mad Maxx" or "Maxx" in reference to Carlos Michael Gadney, a founder who had died. Rival gangs of Swerve included groups such as Smash Team, Crescent Park Villains, and Central.

Many of the photographs and messages on appellant's Facebook page amounted to "cyber-banging," which Gault described as using the Internet to promote one's own gang or to disrespect rival gangs. In one such exchange, appellant responded to posts that disrespected the Swerve Team by making threats and posting pictures of himself pointing what appeared to be a gun. Gault recognized Deandre and two other individuals in the group photographs on appellant's Facebook page to be Swerve Team members. Deandre was on appellant's list of Facebook "friends."

According to Gault, the primary activities of the Swerve Team included felonies such as burglaries, narcotics sales, possession of firearms and criminal threats. On February 22, 2013, Swerve Team member Shawn Glasper was convicted of carrying a loaded weapon under Penal Code section 12031, subdivision (a)(1). On March 1, 2013,

Swerve member Jermaine Hicks was convicted of the unregistered sale, loan or transfer of a firearm under Penal Code section 27545, based on his sale of several guns to law enforcement officers, purportedly for a home invasion robbery.

Gault believed appellant was an active participant in the Swerve Team, based on his personal contacts with appellant, the photographs of appellant throwing gang signs, appellant's posts on Facebook in which he appeared to be bragging to intimidate rival gang members, and appellant's possession of marijuana for sale. In Gault's opinion, appellant's crime of possessing marijuana for sale was gang related because the gang needed money and marijuana brought in currency. Selling marijuana "furthers the gang because he's bringing currency in and everybody is happy when they have money, and they can go out. They can go out and party and do what they want. That's how it's furthering the gang, promot[ing] it. I mean, it's, if you're promoting, you're putting out, I'm selling this, that's how you get your name out, and that's how you get more clientele. Their weed is stronger, promoting, and we got the best weed in town, come to North." By bringing in money for the gang, appellant was "putting work in for his crew." Gault had not come across anyone selling marijuana who was not part of a gang. He noted that one of the photographs of appellant was taken at the intersection of Fifth and Market, an area where the Swerve Team sold drugs.

Rosalind testified that when the police entered her apartment to conduct the probation search, they set off a flash bomb and told everyone to get down on the floor. She had never seen appellant with the backpack in which the marijuana was discovered and did not know how it came to be in her van. Rosalind was surprised when appellant claimed ownership of the marijuana because she had never known him to sell marijuana. She explained that her son Armani had written "Swerve Team" on the headboard of the bed in Deandre's room. "Swerve for Irv" was a saying her children used in reference to a murdered friend; "Maxx" was the name of another friend who had died and her children sometimes wrote his name in his honor.

The parties stipulated that the prosecution's firearm expert could not determine whether the photographs on appellant's Facebook page and cell phone depicted real guns as opposed to replicas.

Based on this evidence, the trial court sustained the allegations that appellant had possessed marijuana for sale and had done so for the benefit of a criminal street gang. It adjudged him to be a ward of the juvenile court, placed him on juvenile probation, committed him to the Orin Allen Youth Rehabilitation Facility for 6 months, and calculated his maximum term of confinement as 7 years 9 months 18 days, which included credit for 72 days in custody. (Welf. & Inst. Code, § 726, subds. (a)(3) & (d).) The court did not sustain the allegation that appellant had possessed a firearm.[3]

II. DISCUSSION

a. *Sufficiency of the Evidence—Possession for Sale*

Appellant argues the judgment must be reversed because the evidence was insufficient to support the juvenile court's finding that he possessed the marijuana at issue with the requisite intent to sell. We disagree.

" 'Unlawful possession of a controlled substance for sale requires proof the defendant possessed the contraband with the intent of selling it and with knowledge of both its presence and illegal character.' " (*People v. Harris* (2000) 83 Cal.App.4th 371, 374.) Intent to sell may be established by circumstantial evidence, including the opinion of a qualified expert that based on such factors as quantity, packaging and the normal use of an individual, the drugs were possessed with the purpose of selling them. (*Id.* at pp. 374-375.)

When considering a challenge to the sufficiency of the evidence on appeal, our role is limited. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) We review the record in

[3] The court explained that while it harbored a strong suspicion appellant was holding real guns rather than replicas in the various photographs found on his cell phone and on his Facebook page, the guns' authenticity had not been proved beyond a reasonable doubt.

the light most favorable to the judgment to determine whether there is evidence that is reasonable, credible and of solid value, such that the trier of fact could find the defendant guilty beyond a reasonable doubt. (*Ibid*.) When substantial evidence supports the judgment, we defer to the trier of fact and may not substitute our own judgment. (*Ibid*.)

Substantial evidence supports the trial court's order sustaining the allegation of possession for sale. Appellant voluntarily admitted that he owned the marijuana discovered during the search, which was separately packaged in a manner appropriate for multiple, individual sales. A digital scale was found in the same backpack as the marijuana, and text messages that had been recently sent from appellant's cell phone referred to marijuana sales and were accompanied by photographs of marijuana. Appellant's phone contained a photograph of him flashing several $20 bills, which could be reasonably interpreted as a boast that he was earning money through drug sales.

Detective Gault, a qualified expert, testified that the total weight of the marijuana (137.78 grams) exceeded the amount that would be possessed by the typical user, who generally carries only "a personal dime bag or two." Gault opined that based on the quantity, the packaging, the presence of the scale, and the photographs and communications on appellant's cell phone, the marijuana was possessed with the intent to sell. "It is well-settled that '. . . experienced officers may give their opinion that the narcotics are held for purposes of sale based upon such matters as quantity, packaging and normal use of an individual; on the basis of such testimony convictions of possession for purpose of sale have been upheld.' " (*People v. Parra* (1999) 70 Cal.App.4th 222, 227.) Gault's opinion was supported by the evidence and reversal is not required.

Appellant characterizes Gault's testimony as "conflicting and unreliable" based on his analysis of text messages from appellant's phone referring to "50" and "3.7 grams." Gault stated that 3.7 grams of marijuana was a "dime bag or just doing a fourth," and indicated he meant a fourth of a pound. He then clarified that a pound of marijuana would cost between $3,000 and $8,000, that an ounce contained 28.5 grams, that a gram would cost between $10 and $30, and that he would consider 3.7 grams to be "an eighth or a dime bag." Although these calculations were confusing, they do not detract from the

more central point that the text message about which Gault was being questioned concerned the sale of marijuana. "The credibility and weight of the expert testimony was for the [juvenile court] to determine, and it is not up to us to reevaluate it." (*People v. Flores* (2006) 144 Cal.App.4th 625, 633.)

b. *Sufficiency of the Evidence—Gang Allegation*

The gang enhancement under Penal Code section 186.22, subdivision (b)(1) applies to "any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members." Appellant argues the juvenile court's true finding on this allegation must be reversed because the evidence supporting the enhancement was deficient in several respects. As with a challenge to the evidence supporting a substantive offense, we apply the deferential substantial evidence standard to a claim that the evidence underlying a gang enhancement has fallen short. (*People v. Albillar* (2010) 51 Cal.4th 47, 60 (*Albillar*).)

1. *Proof That Swerve Is a Criminal Street Gang*

A "criminal street gang," for purposes of the gang enhancement, is defined as "any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated [in subdivision (e) of the statute], having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity." (Pen. Code, § 186.22, subd. (f).) A "pattern of criminal gang activity" is defined to mean "the commission of, attempted commission of, conspiracy to commit, or solicitation of, sustained juvenile petition for, or conviction of two or more of the [enumerated] offenses, provided at least one of these offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses were committed on separate occasions, or by two or more persons." (Pen. Code, § 186.22, subd. (e).)

Appellant first contends the Swerve Team was not a criminal street gang within the meaning of Penal Code section 186.22 because the evidence was insufficient to show it shared a common name, sign or symbol. We disagree.

"Expert testimony is admissible to establish the existence, composition, culture, habits, and activities of street gangs; a defendant's membership in a gang; gang rivalries; the 'motivation for a particular crime, generally retaliation or intimidation'; and 'whether and how a crime was committed to benefit or promote a gang.' [Citation.]" (*People v. Hill* (2011) 191 Cal.App.4th 1104, 1120; see Evid. Code, § 801; *People v. Vang* (2011) 52 Cal.4th 1038, 1044 (*Vang*); *People v. Gardeley* (1996) 14 Cal.4th 605, 618 (*Gardeley*).) Such evidence includes "the gang's territory, membership, signs, symbols, beliefs and practices, criminal enterprises, rivalries, and the like." (*People v. Hernandez* (2004) 33 Cal.4th 1040, 1049.) Expert testimony on these subjects is admissible even though it embraces an ultimate issue of fact. (Evid. Code, § 805; *Vang* at p. 1048.)

Detective Gault testified as an expert on the Swerve Team, having had near-daily contact with its members and having investigated a number of offenses committed by its members. Appellant does not challenge his qualifications as a gang expert. Gault opined that the Swerve Team was known by that name and described a number of signs and symbols associated with the gang. Though appellant complains that not all of these signs and symbols were used by all members of the gang, or were used inconsistently, the term "Swerve" was common to all. "The association of multiple names with a gang satisfies the statute's requirement so long as at least one name is common to the gang's members." (*In re Nathaniel C.* (1991) 228 Cal.App.3d 990, 1001 (*Nathaniel C.*).)

Appellant also points to evidence that the terms "Swerve" and "Mad Maxx" were not used exclusively by gang members, but were also used by "some of the community members" as a tribute to the deceased Irving Cooley and Carlos Michael Gadney. A name, sign or symbol does not have to be *unique* to the gang to be *common* to the gang—a number of court decisions have recognized that certain colors, letters, numbers and sporting attire may constitute symbols of a gang, even though they may also be used by the public at large. (E.g., *People v. Jasso* (2012) 211 Cal.App.4th 1354, 1358, 1376-1378

[affirming gang enhancement in case where expert testified that motifs of Norteño gang include the number 14, the color red, the logos of the San Francisco Giants baseball team, and the eagle that is the symbol of the United Farm Workers agricultural labor union].)

Appellant also contends the evidence was insufficient to show that one of the "primary activities" of the Swerve Team was an offense enumerated in Penal Code section 186.22. Again we disagree. Gault testified that the primary activities of Swerve included burglaries, narcotics sales, possession of firearms and criminal threats, all offenses listed in Penal Code section 186.22, subdivision (e). Gault himself had investigated at least 20 crimes by Swerve Team members. Expert testimony by an experienced investigator can establish a gang's primary activities. (*People v. Sengpadychith* (2001) 26 Cal.4th 316, 324; *Gardeley*, *supra*, 14 Cal.4th at p. 620; *People v. Hunt* (2011) 196 Cal.App.4th 811, 821.)

Appellant notes that Gault was initially asked what crimes Swerve "primarily committed" rather than what were the gang's "primary activities." Shortly after, however, Gault affirmed that the primary activities of the gang were the same crimes he had previously described. Appellant also suggests that Gault's testimony was lacking in foundation, comparing the case to *In re Alexander L.* (2007) 149 Cal.App.4th 605, 611-612 (*Alexander L.*), in which the court concluded the gang expert's testimony was insufficient to establish the primary activities of the gang at issue. As described by the court in *Alexander L.*, the sum total of the expert's testimony on primary activities was as follows: "I know they've committed quite a few assaults with a deadly weapon, several assaults. I know they've been involved in murders. [¶] I know they've been involved with auto thefts, auto/vehicle burglaries, felony graffiti, narcotic violations." (*Id*. at p. 611.) This vague, secondhand testimony was much different than that presented by Gault and was not predicated on the same degree of personal familiarity with the gang as Gault had with the Swerve Team.

Finally, appellant complains no substantial evidence showed that Swerve had engaged in a "pattern of criminal gang activity," namely, that gang members had committed two or more so-called predicate offenses within the statutorily defined period.

(*Gardeley*, *supra*, 14 Cal.4th at pp. 616-617.) He acknowledges that Gault testified about two such felony convictions, but argues his testimony on this point was based on nonspecific hearsay not amounting to substantial evidence. We disagree.

Gault testified that Shawn Glasper was a member of the Swerve Team and was convicted on December 1, 2011, of carrying a loaded weapon in violation of former Penal Code section 12031, subdivision (a)(1) (now Penal Code section 25850). Gault also testified that Jermaine Hicks, another Swerve member, was convicted of the unregistered transfer, loan or sale of a firearm under Penal Code section 27545 on March 1, 2013. Both convictions qualified as predicate offenses for purposes of the gang enhancement. (Pen. Code, § 186.22, subd. (e)(22) & (33).) Gault outlined the circumstances underlying those offenses, having gathered information about the crimes from speaking with his law enforcement colleagues. His experience in dealing with the Swerve Team gang, including his investigations and personal conversations with members, suffice to establish the foundation for his testimony. (*People v. Martinez* (2008) 158 Cal.App.4th 1324, 1330.) It also distinguishes this case from such cases as *In re Leland D*. (1991) 223 Cal.App.3d 251, 259 and *Nathaniel C.*, *supra*, 228 Cal.App.3d at page 1003, in which the courts concluded a gang expert's vague, secondhand testimony was insufficient to prove the predicate offenses necessary for the gang enhancement.

Moreover, the trial court took judicial notice of the superior court files for both predicate offenses. (See *People v. Duran* (2002) 97 Cal.App.4th 1448, 1463 (*Duran*); Evid. Code, § 452.5, subd. (b) [certified court records admissible to prove fact of conviction and fact that offense reflected in the record occurred]; *People v. Villegas* (2001) 92 Cal.App.4th 1217, 1228 [predicate offense sufficiently established by expert's testimony and court's taking of judicial notice of case file].) Appellant did not object to this procedure, or to Gault's testimony about the predicate offenses, and has forfeited his foundational challenge on appeal. (Evid. Code, § 353; see *People v. Seaton* (2001) 26 Cal.4th 598, 642-643.)

2. *"For the Benefit of or in Association with"* the Swerve Team

The gang enhancement under Penal Code section 186.22, subdivision (b)(1) contains two distinct prongs. (See *Albillar, supra*, 51 Cal.4th at p. 59.) The first is phrased in the disjunctive and may be satisfied in any of three ways: (1) when the crime was committed "for the benefit of" the gang, (2) when it was committed "at the direction of" the gang, or (3) when it was committed "in association with" the gang. Gault testified that in his opinion, appellant possessed marijuana for sale "in association with and for the benefit of Swerve Team." We conclude the first prong of Penal Code section 186.22, subdivision (b)(1) was met because substantial evidence supported a finding appellant committed the offense of possessing marijuana for sale "in association with" the Swerve Team.

Detective Gault identified Deandre as a member of the Swerve Team, an opinion that found corroboration in the photographs of Deandre on appellant's Facebook page and the Swerve graffiti on the bed in his room. (See *Duran, supra*, 97 Cal.App.4th at p. 1464 ["an individual's membership in a criminal street gang is a proper subject for expert testimony"].) Deandre was known as "Black." Appellant had admitted in a Facebook exchange that "black" had given him a gun to hold, suggesting their relationship was based on more than kinship and extended to criminal activity. The marijuana appellant was found to have possessed for sale was discovered inside a van owned by Deandre's mother Rosalind, in front of the home where Deandre and Rosalind lived. There was no suggestion appellant had independent access to the van, and Rosalind denied knowing the marijuana was there. Circumstantial evidence supported a determination that someone else with a connection to the premises—Deandre—was involved in placing the marijuana in the van.

Deandre's involvement with appellant's marijuana transactions was also evidenced by the communications found on appellant's cell phone. In a text message to someone named "Mari," appellant stated, "Black just gave me this," referring to an attached photograph of marijuana. A text message from Mari on January 24, 2014, four

days before the probation search, stated: "Goin home. Go to black house tonite. And did black give you yo 8th yet??"

From this, a reasonable trier of fact could infer that appellant's possession for sale of marijuana was part of an effort to sell marijuana "in association with" Deandre, who was a member of the Swerve Team. (See *Albillar, supra*, 51 Cal.4th at pp. 60-63 [rape of victim by three gang members acting together was committed in association with the gang, even though the defendants were related to one another]; *People v. Leon* (2008) 161 Cal.App.4th 149, 163 [defendant committed crimes in association with a fellow gang member]; *People v. Morales* (2003) 112 Cal.App.4th 1176, 1198 (*Morales*) ["jury could reasonably infer the requisite association from the very fact that defendant committed the charged crimes in association with fellow gang members"].) Although "it is conceivable that several gang members could commit a crime together, yet be on a frolic and detour unrelated to the gang," there is no evidence of this in the case before us. (*Morales*, at p. 1198.) Gault identified a photograph of appellant as having been taken at Fifth and Market, where the Swerve Team sold drugs, suggesting appellant's drug dealing was connected to the gang.

Because the first prong of Penal Code section 186.22, subdivision (b)(1) has been satisfied by evidence appellant acted "in association with" the Swerve Team, it is unnecessary to determine whether the evidence additionally showed appellant acted "for the benefit of" the gang. (See *Morales, supra*, 112 Cal.App.4th at p. 1198.)

3. *Specific Intent to Promote, Further or Assist Gang Members*

Appellant argues the evidence was insufficient to prove the second prong of Penal Code section 186.22, subdivision (b)(1), which required a showing appellant possessed marijuana for sale "with the specific intent to promote, further, or assist in any criminal conduct by gang members." We reject the contention.

The specific intent necessary for the gang enhancement " 'is rarely susceptible of direct proof and usually must be inferred from the facts and circumstances surrounding the offense.' " (*People v. Rios* (2013) 222 Cal.App.4th 542, 567-568.) The prosecution

may prove the intent element through the use of hypothetical questions posed to a qualified gang expert, though it is less clear whether or to what extent an expert may offer an opinion regarding the specific defendant's state of mind. (*Vang*, *supra*, 52 Cal.4th at p. 1048 & fn. 4; *People v. Valdez* (1997) 58 Cal.App.4th 494, 507 (*Valdez*).) In Detective Gault's opinion, appellant "specifically intended to promote, further, or assist the Swerve Team" by possessing marijuana for sale.[4]

Appellant complains that Gault's testimony improperly advised the fact-finder how to decide the case and was not adequately supported by the record. (See *People v. Ramon* (2009) 175 Cal.App.4th 843, 849-851 [defendant caught driving a stolen truck with a firearm under the seat in the presence of a fellow gang member; expert's testimony that the defendant intended to promote the gang because the gun and vehicle could be used to commit crimes and his gang committed crimes was speculative and not substantial evidence].) We disagree, because Gault's opinion was coupled with other evidence from which a trier of fact could reasonably infer the necessary intent.

The gang enhancement does not require proof that the defendant intended to promote, further or assist criminal conduct *other* than that connected with the charged offense, and does not require proof of a specific intent to promote, further or assist a *gang-related* crime. (*Albillar*, *supra*, 51 Cal.4th at pp. 64-65.) The evidence supported the inference that Deandre, a member of the Swerve Team, assisted appellant in his efforts to sell marijuana, and that by possessing marijuana for sale, appellant intended to promote, further or assist Deandre's own criminal conduct. "[I]f substantial evidence establishes that the defendant intended to and did commit the charged felony with known members of a gang, the jury may fairly infer that the defendant had the specific intent to promote, further, or assist criminal conduct by those gang members. . . . Accordingly,

[4] Appellant did not object to the form of Gault's testimony and has forfeited any objection based on the prosecution's failure to employ a hypothetical. (See *People v. Roberts* (2010) 184 Cal.App.4th 1149, 1193; *Valdez*, *supra*, 58 Cal.App.4th at pp. 505-506.)

there was substantial evidence that [appellant] acted with the specific intent to promote, further, or assist gang members in that criminal conduct." (*Albillar*, at pp. 67-68.)

C. *Maximum Confinement Period*

When a minor who has been declared a ward of the juvenile court is removed from the physical custody of his or her parent, "the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense." (Welf. & Inst. Code, § 726, subd. (d)(1).) The minor is entitled to predisposition custody credits against this maximum period of confinement. (*In re A.M.* (2014) 225 Cal.App.4th 1075, 1085-1086.)

At the disposition hearing, the juvenile court calculated appellant's maximum confinement period under Welfare and Institutions Code section 726, subdivision (d), as 7 years 9 months 18 days, based on an "aggregate custody time" of 8 years minus the 72 days appellant had already spent in custody. As the Attorney General appropriately concedes, this calculation was incorrect because the maximum term for possessing marijuana for sale is 3 years and the maximum term for the gang enhancement is 4 years, for a maximum term of 7 years rather than 8. Appellant's maximum term of confinement at the time of sentencing was 7 years less the 72 days he had spent in custody, for a total of 6 years 9 months 18 days. (Health & Saf. Code, § 11359; Pen. Code, §§ 186.22, subd. (b)(1)(A), 1170, subd. (h)(1).)

D. *Probation Condition Prohibiting Possession of Weapons*

Appellant was ordered not to possess any weapons or ammunition as a condition of his probation. He argues this requirement is unconstitutionally vague because it fails to provide an explicit standard for determining what objects might be deemed "weapons." Appellant asks this court to modify the condition to instead prohibit the possession of "deadly or dangerous weapons." We agree the suggested modification is appropriate.

A probation condition is unconstitutional when its terms are so vague that people of " 'common intelligence' " must guess at its meaning. (*In re Sheena K.* (2007) 40

Cal.4th 875, 890; see *In re R.P.* (2009) 176 Cal.App.4th 562, 566 (*R.P.*).) "To survive a challenge on the ground of vagueness, a probation condition ' "must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated." ' " (*R.P.*, at p. 566.)

The term "weapon," without more, does not provide appellant with adequate notice of what is required of him. Although a number of objects, such as a firearm or a switchblade knife, would qualify as a "weapon" by their very nature, ambiguity could arise in classifying other objects such as a kitchen knife or a baseball bat. Modifying the probation condition to prohibit the possession of any "deadly or dangerous weapons" will provide appellant with notice that he must not possess any inherently dangerous item that is designed for use as a weapon, or any item being used in a way that renders it capable of inflicting great bodily injury or death. (*R.P.*, *supra*, 176 Cal.App.4th at p. 567.)

III. DISPOSITION

The judgment is modified in the following respects: (1) Appellant's maximum term of confinement under Welfare and Institutions Code section 726, subdivision (d) is calculated as 7 years less 72 days of predisposition credits; (2) the probation condition prohibiting appellant from possessing weapons or ammunition is modified to prohibit appellant from possessing any deadly or dangerous weapons, or any ammunition. As so modified, the judgment is affirmed.

NEEDHAM, J.

We concur.

JONES, P.J.

SIMONS, J.